

REGULATION NO. 2

The Arkansas Medical Practices Act authorizes the Arkansas State Medical Board to revoke or suspend the license issued by the Board to practice medicine if the holder thereof has been found guilty of grossly negligent or ignorant malpractice.

“Malpractice” includes any professional misconduct, unreasonable lack of skill or fidelity in professional duties, evil practice, or illegal or immoral conduct in the practice of medicine and surgery.

It shall include, among other things, but not limited to:

1. Violation of laws, regulations, and procedures governing payment to physicians for medical services for eligible public assistance recipients and/or other third party payment programs.
2. Participation in any plan, agreement, or arrangement which compromises the quality or extent of professional medical services or facilities at the expense of the public health, safety, and welfare.
3. Practicing fraud, deceit, or misrepresentation in the practice of medicine.
4. The prescribing of excessive amounts of controlled substances to a patient including the writing of an excessive number of prescriptions for an addicting or potentially harmful drug to a patient.
5. The prescribing of Schedule II controlled substances by a physician for his own use or for the use of his immediate family.
6. *The treatment of pain with dangerous drugs and controlled substances is a legitimate medical purpose when done in the usual course of medical practice. If the provisions as set out below in this Resolution are met, and if all drug treatment is properly documented, the Board will consider such practices as prescribing in a therapeutic manner, and prescribing and practicing medicine in a manner consistent with public health and welfare.

However, a physician who prescribes **narcotic agents Schedule 2, 3, 4, and 5, excluding Schedule 4 Propoxyphene products and to include the schedule drugs Talwin, Stadol, and Nubain, on a long term basis (more than six (6) months) for a patient with pain not associated with malignant or terminal illness will be considered exhibiting gross negligence or ignorant malpractice unless he or she has complied with the following:

- a. The physician will keep accurate records to include the medical history, physical examination, other evaluations and consultations, treatment plan objective, informed consent noted in the patient record, treatment, medications given, agreements with the patient and periodic reviews.
 - b. The physician will periodically review the course of schedule drug treatment of the patient and any new information about etiology of the pain. If the patient has not improved, the physician should assess the appropriateness of continued prescribing of scheduled medications or dangerous drugs, or trial of other modalities.
 - c. The physician will obtain written informed consent from those patients he or she is concerned may abuse controlled substances and discuss the risks and benefits of the use of controlled substances with the patient, his or her guardian, or authorized representatives.
 - d. The physician will be licensed appropriately in Arkansas and have a valid controlled substance registration and comply with the Federal and State regulations for the issuing of controlled substances and prescriptions, more especially the regulations as set forth in 21 Code of Federal Regulations Section 1300, et sequence.
7. A licensed physician engaging in sexual contact, sexual relations or romantic relationship with a patient concurrent with the physician-patient relationship; or a licensed physician engaging in the same conduct with a former patient, if the physician uses or exploits trust, knowledge, emotions or influence derived from the previous professional relationship, shows a lack of fidelity of professional duties and immoral conduct, thus exhibiting gross negligence and ignorant malpractice. A patient's consent to, initiation of, or participation in sexual relationship or conduct with a physician does not change the nature of the conduct nor the prohibition.
 8. **Requiring minimum standards for establishing physician/patient relationships. A physician exhibits gross negligence if he provides and/or recommends any form of treatment, including prescribing legend drugs, without first establishing a proper physician/patient relationship.
 - A. For purposes of this regulation, a proper physician/patient relationship, at a minimum requires that:
 1. The physician performs a history and physical examination of the patient adequate to establish a diagnosis and identify underlying conditions and/or contraindications to the treatment recommended/provided, OR personally knows the patient and the patient's general health status through an “ongoing” personal or professional relationship, AND THAT
 2. Appropriate follow-up be provided, when necessary, at medically necessary intervals.
 - B. For the purposes of this regulation, a proper physician/patient relationship is deemed to exist in the following situations:

1. When treatment is provided in consultation with, or upon referral by, another physician who has an ongoing relationship with the patient, and who has agreed to supervise the patient's treatment, including follow up care and the use of any prescribed medications.
 2. On-call or cross-coverage situations.
- C. Exceptions – Recognizing a physician's duty to adhere to the applicable standard of care, the following situations are hereby excluded from the requirement of this regulation:
1. Emergency situations where the life or health of the patient is in danger or imminent danger.
 2. Simply providing information of a generic nature not meant to be specific to an individual patient.

History: Adopted June 17, 1976; Amended March 13, 1997;

December 5, 1997; ADOPTED BY EMERGENCY ORDER ON SEPTEMBER 18, 1998 As defined in 21 Code of Federal Regulation; *Approved by the Board following Public Hearing on December 3, 1998; **Adopted April 6, 2001; Amended February 7, 2002